

1 IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

2 * * *

3 REGARDING THE WATER DISPUTE BETWEEN MR. SAMUEL ANDRISANI AND THE
4 BOARD OF MINERAL COUNTY COMMISSIONERS TO THE WATER OF SPEARMINT
5 SPRINGS.

6 PETITION

7 TO DETERMINE RELATIVE RIGHTS OF CLAIMANTS

8 Come now SAMUEL ANDRISANI, claimant herein to $3\frac{1}{2}$ gpm
9 of the waters of Spearmint Springs by Deed to patented land and
10 vested water rights.

11 Pursuant to NRS 533.090, claimant Andrisani submits this
12 petition to the State Engineer, respectfully requesting a deter-
13 mination of the relative rights to the waters of Spearmint Springs.

14 The grounds for so moving are that in violation of State
15 water law (NRS 533.085, 533.090) and his vested water rights, the
16 Board of Mineral County Commissioners and Mr. John Sinkey,
17 individually or together have interfered with the water flow from
18 Spearmint Springs to the Andrisani property. Without lawful
19 authorization they have obstructed the water flow to his property
20 which has vested water rights.

21 Mr. Samuel Andrisani is owner of Deed 34636 to the
22 following property:

23 $N\frac{1}{2}$ of $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 28, a total of 20 acres
24 all in Township 6 North, Range 35 East. M. D. B. & M.
situated in the Sodaville Area of Mineral County, Nevada.

25 The evidence herein presented (documents attached) and
26 on file in the office of the State Engineer reveal:

27 I

28 That the present Andrisani property is by original title
29 a Nevada State Land Patent with vested water rights to Spearmint
30 Springs dating back to 1898. All records reveal no separation
31 of water rights from $SW\frac{1}{4}$ of $SW\frac{1}{4}$ or place of use (Section 28).

1 appurtenances, hereditaments or in anyway appertaining.

2 The first pipeline (like a stream, canal or tributary)
3 from Spearmint Springs to Town of Sodaville (SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 28)
4 (Andrisani property N $\frac{1}{2}$) built 1898 by Stewart and Brazzanovich
5 and water has flowed continuously for 83 years. This is confirmed by
6 the attached documents including the latest Certificate of
7 Appropriation issued to the Board of Mineral County (1950) No.
8 11521 (Place of Use SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28)(01495).

9 II

10 That the present Andrisani property and vested water
11 rights to Spearmint Springs was passed by Deed. Note the pivotal
12 documents attached hereto (1) Board of Mineral County purchased
13 the property (N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ Sec. 28 present Andrisani
14 property) from Nevada Massachusetts Company (See Indenture August
15 2, 1943) with water rights. (See also Certificate of Recorder
16 March 22, 1945)

17 That Application No. 9898 Sept. 12, 1935 states that
18 the water will be used in SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 28. The next
19 document application No. 11521 does not change this location or
20 in anyway separate the water from this land (SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 28)
21 dated March 3, 1950.

22 III

23 That in the very next year on April 10, 1951 (See Thomle
24 Deed) the Board of Mineral County Commissioners sold this land
25 (N $\frac{1}{2}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 28) to Thomle (present Andrisani property)
26 with the vested water rights intact. There are no exclusionary
27 clauses and states: "together with all and singular the tenements,
28 hereditaments and appurtenances thereunto belonging or in anywise
29 appertaining,..."

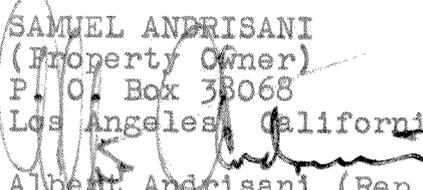
30 (Note also earlier plats with notations of "Water Rights
31 with pipelines from Spearmint Canyon with rights of way "(pat. v)

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That it is established by documentation that the vested water rights from Spearmint Springs to SW $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 28 remain intact and thereby Mr. Samuel Andrisani owner of the N $\frac{1}{2}$ is entitled to 50% of the established water flow to this area. The water flow of 7 gpm from Spearmint Springs can be verified by the records in the office of the State Engineer (see some attached evidence and affidavit) and numerous witnesses including Mr. John Sinkey, Mr. Souza (Agent Board of Mineral County) Mr. Samuel Andrisani and others since 1950 and substantiated by the 1973 flow and evidence. Thereby 3 $\frac{1}{2}$ gpm is the vested water right of Mr. Samuel Andrisani to his property.

Pending the resolution of this water dispute, Mr. Samuel Andrisani respectfully requests an interim Order from the State Engineer that an unspecified amount of water be restored to flow immediately to his property to avoid any further damage. (e.g. The trees have been without water since Feb. 1980 when complaint of water interference was brought to the attention of the State Engineer. Mr. Samuel Andrisani has lawfully through the vested rights of water from Spearmint Springs to this property as passed down by Deed, been using the water since 1973.

DATED this 22nd day of January, 1981

SAMUEL ANDRISANI
(Property Owner)
P. O. Box 38068
Los Angeles, California 90038

Albert Andrisani (Rep.)
892 E. William Street
Carson City, Nevada 89701

Copy to: Mr. Larry G. Bettis/ Board of Mineral County

1 IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

2 Points and Authorities: * * *

3 Come now SAMUEL ANDRISANI, claimant herein to 3½ gpm
4 of the waters of Spearmint Springs as passed by Deed to land.

5 It is with reasonable certainty that the Board of Mineral
6 County Commissioners fully intended to convey water rights to
7 Thomle as passed by Deed in 1951. Not only was there an abundance
8 of water at that time, it is also noted the Deed contains no
9 exceptions or reservations. The Certificate of Appropriations (1950
10 No. 11521 clearly indicates the place of use. "A 2 inch pipeline
11 17,663 feet long conveys the water from the junction box to the
12 Town of Sodaville located in SW¼ SW¼ Section 28, T. 6 N., R. 35 E."
13 It is equally clear that they were well aware that the sale of
14 their property N½ of SW¼ of SW¼ Section 28 was in the Town of
15 Sodaville and water was flowing in such an amount that in effect
16 Sodaville was the dumping ground for this excess. They obviously
17 had no desire or intention to separate the water rights from the
18 land, and thereby sold the land, "together with all and singular
19 the tenements, (house was on property) hereditaments and appurt-
20 tenances thereunto belonging or in anywise appertaining,..."

21 Supporting Authorities:

22 Zolezzi v. Jackson 72 Nev. 150
23 "...no water rights were expressly granted or expressly ex-
24 cluded, water was appurtenant to the land and passed under
25 defendants' deed conveying land, "together" with all and singu-
26 lar the tenements, hereditaments and appurtenances thereto
belonging or in anywise appertaining ***, because doctrine
of appurtenance had been established law of this state since
waters were first appropriated to beneficial use."

27 Am Jur - Waters 78 Sec. 243
28 "It is a general principle that water rights which are
appurtenant to land pass under deed of conveyance of such
land, unless expressly reserved..."

29 Am Jur - Waters Sec. 233
30 "If a water right is in its nature an appropriate and useful
adjunct of the land ... and there is nothing to show that the
31 parties intended it to be a mere personal right, it should be
held to be an easement appurtenant to the land..."

* * *

Some law books, ADMIRALTY, discuss water rights to the land.

It is with respect to water rights that the courts of this State

have been particularly liberal in their construction of the

rights of riparian owners. It is also noted that the courts have

been liberal in their construction of the rights of riparian owners

in cases where the riparian owner has a beneficial use of the

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